

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION No. 68 OF 2018

**TANZANIA BREWERIES LTD.....1st PETITIONER
REGISTERED TRUSTEES OF TBL Ltd. Employees Share Ownership
Trust.....2nd PETITIONER**

Versus

OSCAR SHELUKINDO & 12 OTHERS.....RESPONDENTS

RULING

05/07/- 03/10/2019

J. A. DE-MELLO, J;

Through a Petition, the Petitioners have moved this Court seeking to **Stay** the **Proceedings in Civil case No. 256 of 2017** together with its accompanying **Misc. Civil Application No. 4 of 2018**. Both sides have made lengthy and, details submissions supporting and opposing the Petition citing several and relevant authorities. In fact much of what has been shared has no relevance with the prayers for **Stay of a Suit** pending but into rather dwell into merits or otherwise of the Petition.

What then can this Court say about this Petition? At the outset and as observed by the **1st to 5th and 6th to 12th Respondents** were Notices for Preliminary Points of Objection as follows;

- i) The Petition is incompetent for containing annexures which are not certified contrary to Rule 8 of the Arbitration Rules GN No. 427 of 1957**
- ii) The Petition is defective for being preferred under wrong /defective title contrary to mandatory provision of Rule 6 of the Arbitration Rules GN No. 427 of 1957**
- iii) The Court is not properly moved for lack of Affidavit verifying the Petition**

It is the Respondents view through their Counsel that, the Petition be **Struck Out** with costs.

On their part the 6th to 12th Respondents have raised two (2) objections as hereunder;

- (i) The Petition is defective for being preferred under the wrong/ defective Title contrary to the mandatory provisions of Rule 6 of the Arbitration Rules GN No. 427 of 1957**
- (ii) The Petition is incompetent in Court for Want of Affidavit verifying the Petition.**

Similarly it is their prayer for **Stricking Out** the Petition with costs.

I am inclined to direct the addressing of the said objections based on the demands of the law, to hear and determine them, before going into merits of the case. Several cases have subscribed to this position but to share a few are **Shahida Abdul Hassanali vs. Mahed M.G Karji, Civil Application No. 42 of 1999 (CAT)** and, that of **Thabit Ramadhani Maziku & Another vs. Amina Khamis Tyela & Another, Civil Appeal No. 98 of 2011.**

In **Shahida's (supra)** the Court had this to say;

"The law is well established that a Court seized with a preliminary objection is first required to determine that objection before going into merits or the substance of the case or application before it".

In the case of **Bank of Tanzania Ltd vs. Devram P. Valambia, Civil Application No. 15 of 2002 (CAT)** (Unreported) the Court observed;

"The aim of preliminary objection is to save time of the Court and of the parties by not going into merits of the Application because there is appoint of law that will dispose the matter summarily".

Unless and, until these are fully heard and determined, the Court's is duty bound to dispose all in full by pronouncing Ruling before dealing with merits of the suit. None of the Respondent though of it this way and in absence the result will render the subsequent matter a nullity.

Considering the foregoing and, to afford parties their right to be heard, in the interest of justice, I exercise my discretion judiciously to order the hearing of the said objections and in writing, with a view of keeping record right for future of the **Civil Case No. 256 of 2017, Misc. Civil Application No. 4 of 2018**, as well as this **Petition Misc. Civil Application No. 68 of 2018**.

It is ordered.


J. A. DE MELLO

JUDGE

03/10/2019